

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEANNA SMITH,

Plaintiff,

Case No. 12-cv-14702

v.

HONORABLE STEPHEN J. MURPHY, III

DEWBERRY, et al.,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION (docket
no. 15) **AND STRIKING MOTION TO DISMISS** (docket no. 10) **AS MOOT**

This is a prisoner civil rights case. Plaintiff Deanna Smith, proceeding pro se, brings this action under 42 U.S.C. § 1983, alleging sexual harassment during her incarceration in violation of the Eighth Amendment. The Court referred all pre-trial proceedings to Magistrate Judge Hluchaniuk for resolution or recommendation. On February 6, 2013, Defendants James Hill, Jodi DeAngelo, Millicent Warren, and Daniel Heyns moved to dismiss. See Mot. to Dismiss, ECF No. 10. To ensure Smith complied with the local rules regarding motion practice, the Magistrate Judge entered an order requiring (and extending the time for) a response by April 1, 2013. See Order, ECF No. 13. When Smith did not file a response by then, the Magistrate Judge entered an Order to Show Cause why the case against the four moving defendants should not be dismissed. See Order to Show Cause, ECF No. 14. Having heard nothing since then, on May 6, 2013, the Magistrate Judge filed a Report and Recommendation ("Report") suggesting the case against the moving defendants be dismissed due to Smith's failure to respond and comply with the Court's order under Civil Rule 41(b). See Report, ECF No. 15.

Civil Rule 72(b) governs review of a magistrate judge's report and recommendation. De novo review of the magistrate judge's findings is only required if the parties "serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2). Nevertheless, because a district judge always retains jurisdiction over a motion after referring it to a magistrate judge, he is entitled to review the magistrate judge's findings of fact and conclusions of law on his own initiative. *See Thomas v. Arn*, 474 U.S. 140, 154 (1985) (clarifying that while a district court judge need not review a report and recommendation "de novo if no objections are filed, it does not preclude further review by the district judge, sua sponte or at the request of a party, under a de novo or any other standard").

Because neither party filed objections to the Report, de novo review of the Report's conclusions is not required. Having reviewed the Report's analysis, in light of the record, and noting the now-three month time period since the order was first entered, the Court finds that its conclusions are factually based and legally sound. Accordingly, it will adopt the Report's findings and dismiss the claims against defendants Hill, DeAngelo, Warren, and Heyns with prejudice.

ORDER

WHEREFORE, it is hereby **ORDERED** that the Report and Recommendation (docket no. 10) is **ADOPTED**.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (docket no. 15) is **STRICKEN AS MOOT**.

IT IS FURTHER ORDERED that the claims against individual defendants Hill, DeAngelo, Warren, and Heyns are **DISMISSED WITH PREJUDICE**.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: June 19, 2013

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on June 19, 2013, by electronic and/or ordinary mail.

Carol Cohron
Case Manager